

(2009) 05 AHC CK 0862

Allahabad High Court

Case No: Criminal M.B.A. No. 20765 of 2008

Irfan Ahmad

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: May 27, 2009

Acts Referred:

- Constitution of India, 1950 - Article 21
- Criminal Procedure Code, 1973 (CrPC) - Section 309, 439
- Juvenile Justice Act, 1986 - Section 12
- Penal Code, 1860 (IPC) - Section 377

Citation: (2009) 3 ACR 2390

Hon'ble Judges: Vijay Kumar Verma, J

Bench: Single Bench

Advocate: Tripathi B.G. Bhai, for the Appellant; A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

Vijay Kumar Verma, J.

A.G.A. has filed counter-affidavit, which is taken on record. Supplementary-affidavit has been filed by the applicant, which is also taken on record.

2. Heard, Sri Tripathi B. G. Bhai, advocate, appearing for the applicant and A.G.A. for the State and perused the record.

3. According to the F.I.R. lodged on 24.4.2008 at 8.30 p.m., by the complainant Majullah at P. S. Dhebarua, district Siddharth Nagar, the allegation in brief, is that the accused Irfan committed unnatural offence (sodomy) with minor son of the complainant on 27.4.2008 at about 6.00 p.m. after carrying him in the garden.

4. The main submission made by learned Counsel for the applicant is that the applicant is in jail since 4.6.2008 and hence on the basis of long incarceration in jail, he deserves bail, as the offence is triable by the Magistrate, who can award

maximum sentence of three years imprisonment.

5. Next submission is that the applicant was juvenile on the date of offence, and hence on this ground also he deserves bail.

6. It is further submitted that no such incident as alleged in F.I.R. had occurred and fabricating a false story of sodomy, the applicant has been falsely roped in this case.

7. The bail has been opposed by the learned A.G.A. contending that very heinous crime has been committed by the applicant with a boy aged about 16 years and he has spoilt his life by committing sodomy with him.

8. Annexure-2 is the medical report of the victim Shamshad. He was medically examined on 28.4.2008 at 10.30 a.m. in Primary Health Centre, Barhal. Signs of violence was seen on external and internal part of anus and there were some tears also. As such the medical report is fully supporting the allegation of committing unnatural offence (sodomy) with the victim. Therefore, on merit, the applicant does not deserve bail in this heinous crime.

9. So far as the matter of the applicant being juvenile is concerned, from the order dated 14.11.2008, passed in CrI. Case No. 348 of 2008 by A.C.J.M., Siddharth Nagar, (Annexure-1 to the supplementary-affidavit dated 16.3.2009, it transpires that the matter has been referred to the Juvenile Justice Board for inquiry. Therefore, this Court cannot record any finding whether the applicant is juvenile or not. In case the applicant is found juvenile after inquiry by the Juvenile Justice Board, then he may move fresh bail application in the court below and if such application is moved, the same will be disposed of in accordance with Section 12 of Juvenile Justice Act.

10. In my considered opinion, the applicant cannot be admitted to bail on the basis of the period of detention in jail also. In this regard, reference may be made to the case of Pramod Kumar Saxena v. Union of India and Ors. LXIII 2008 ACC 115: 2008 (3) ACR 3216 (SC), in which the Hon"ble Apex Court has held that mere long period of incarceration in jail would not be per se illegal. If the applicant has committed offence, he has to remain behind bars. Such detention in jail even as an under trial prisoner would not be violative of Article 21 of the Constitution.

11. For the reasons mentioned hereinabove, the bail application of the applicant Irfan Ahmad is hereby rejected.

12. The trial court concerned is directed to conclude the trial of the applicant within six months applying the provisions of Section 309, Cr. P.C. and avoiding unnecessary adjournments.

13. The office is directed to send a copy of this order within a week to the trial court concerned for necessary action.